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**U.S. Citizenship
and Immigration
Services**

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FILE:  Office: CHICAGO, IL (MILWAUKEE, WI) Date: **NOV 29 2005**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Milwaukee, Wisconsin, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a fifty-five-year-old, married citizen of the United States. The beneficiary was born in India on December 10, 1987, and he is seventeen-years-old.

The officer in charge found that the petitioner filed the "Petition to Classify Orphan as an Immediate Relative" (I-600 petition) after the applicant had turned sixteen years old. Accordingly, the officer in charge found that the beneficiary did not meet the age requirement set forth in section 101(b)(1) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1101(b)(1), and the petition was denied.

On appeal, the petitioner asserts that he filed the I-600 petition with U.S. Citizenship and Immigration Services (CIS) prior to the beneficiary's sixteenth birthday, and that he legally adopted the beneficiary on December 27, 2004. The petitioner requests a refund of his I-600 petition fees in the event that his appeal is denied.

The AAO notes that it has no authority to order the return of the applicant's I-600 petition or appeal fee. *See generally*, Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1 (2003) and 8 C.F.R. § 2.1 (2004) (Discussing AAO appellate authority).

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F)(i), defines orphan in pertinent part as:

[A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence. (Emphasis added).

8 C.F.R. § 103.2(a)(7)(i) provides, in pertinent part that:

[A]n application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The I-600 petition contained in the record contains a CIS "Received" stamp dated November 24, 2004. The CIS "Fee Stamp" date, however, is dated December 8, 2004. The record additionally reflects that CIS sent a letter to the petitioner, dated November 24, 2004, requesting that he resubmit his I-600 petition with the correct fee of \$525.00, plus \$70.00/person for fingerprints.

The AAO finds that the evidence contained in the record establishes that the petitioner's I-600 petition was not properly filed until December 8, 2004, after the beneficiary turned sixteen. The petitioner has therefore failed to establish that the beneficiary meets the age requirement for qualification as an "orphan" under section 101(b)(1)(F) of the Act.

In visa petition proceedings, the burden of proof rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met his burden in the present matter. The appeal will therefore be dismissed

ORDER: The appeal is dismissed.